

THURSDAY, JULY 12, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:10 a.m. with Chairman Parrish and Vice Chairman Chiang present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

# **BUSINESS TAXES APPEALS HEARINGS**

Niguel Country Club, SR EAA 24-689357; 79794

7-1-93 to 6-30-96, \$51,984.96 Tax

For Petitioner:

Gail Egan, Partner

For Sales and Use Tax Department:

Jeffery Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether separately stated dining room dues are subject to tax.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Deals on Wheels Inc., SR AC 99-688978; 15747

4-1-95 to 3-31-98, \$60,349.08 Tax, \$6,209.89 Penalty, Negligence

For Petitioner:

Alan Powers, CPA

Andrew Fell, Owner

For Sales and Use Tax Department:

Warren Astleford, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner's claim that it is illegal for the Board to obtain copies of petitioner's state income tax returns without its permission warrants relief from the tax.

Whether petitioner's claim that it has been singled out for harassment by the Board warrants relief from the tax.

Whether an additional bad debt allowance is warranted.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision; granting the petitioner 30 days to provide additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

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Admiral Foods, Inc., SR AB 97-494505; 28032

Moussa M. Awada &amp; Hamid H. Ahwazi, SR AB 758899; 28031; 91900

1-1-96 to 12-31-96, \$34,109.51 Tax, \$3,410.99 Penalty, Negligence

7-1-95 to 12-31-95, \$ 5,250.80 Tax, \$ 525.08 Penalty, Negligence

\$ 525.08 Penalty, Failure to Pay Timely

For Petitioner:

Moussa Awada

Hamid Ahwazi

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the available sales records provide sufficient evidence of the accuracy of reported amounts of taxable sales.

Whether the evidence supports a decrease in the amount of audited taxable sales for the test period.

Whether the audited amount of taxable sales should be reduced to reflect sales of food "to-go" which were subsequently consumed on the restaurant premises.

Whether the evidence shows that the test period was not representative of petitioners' operations during the audit period.

Whether relief is warranted from the 10 percent penalty added for negligence.

Whether relief from the 10 percent penalty for failure to timely pay the determination is warranted for case no. 91900.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the disputed taxable measure be reduced by 10% and delete the finality penalty otherwise the petition be redetermined as recommended by the Appeals Section.

The Gary's Companies, SY AC 13-115395; 48280; 89000058470

10-1-95 to 10-4-97, \$139,372.04 Tax

For Petitioner:

Glenn Bystrom, Representative

Suzanne Beaudelaire, Representative

For Sales and Use Tax Department:

Warren Astleford, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner is entitled to the claimed \$1,689,358.00 tax-paid purchases resold deduction for rental garments in its closeout return for the fourth quarter 1997.

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Whether petitioner's transfer of tangible personal property to The Gary's Group LLC in exchange for a 96 percent interest in The Gary's Group LLC constituted an exempt occasional sale, or alternatively, a nontaxable transfer of property to a commencing limited liability company.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Plastic Concept, Inc., SR EA 16-633865; 55960, 27862  
4-1-95 to 3-31-98, \$66,125.26 Tax

For Petitioner:

Horst F. Schulze, CEO

Kenneth L. Little, CPA

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No disqualifying contributions were disclosed.

Issues: Whether any adjustments are warranted to the audited measure of disallowed claimed sales for resale of display cases.

Whether petitioner is entitled to relief from the tax based on alleged erroneous written advice it received from the Board on prior sales and use tax audits.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Klehs and Mr. Andal voting yes, Mr. Chiang and Ms. Mandel abstaining, the Board ordered that the petition be granted.

James & Wanda L. Eskew, SR AR 22-750870; 89000371970  
7-1-93 to 6-30-96, \$5,505.31 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Warren Astleford, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioners should be allowed to offset the excess tax they collected on sales of exempt food products against the liability for sales of carbonated drinks, which they erroneously failed to tax.

Action: Mr. Klehs moved that the petition be redetermined as recommended by the Appeals Section. No vote was taken.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board ordered that the petition be granted.

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Keum Nam Lee, SR AC 99-136750, 890021188220

9-1-92 to 9-30-97, \$55,662.06 Tax, \$13,915.69 Penalty, Fraud

SR EA 99-525236; 89002293130

6-1-94 to 9-30-97, \$32,878.56 Tax, \$8,219.72 Penalty, Fraud

SY AP 99-826979; 89002407670

11-28-95 to 9-30-97, \$22,349.72 Tax, \$5,587.47 Penalty, Fraud

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

#### **FINAL ACTION ON PETITIONS HEARD JULY 12, 2001**

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal not participating, the Board ordered that the petition of *Niguel Country Club*, SR EAA 24-689357; 79794, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermined the petition of *The Gary's Companies*, SY AC 13-115395; 48280; 89000058470. The motion was seconded by Ms. Mandel but failed to carry, Mr. Klehs and Mr. Chiang voting yes, Mr. Parrish and Mr. Andal voting no, Ms. Mandel not voting.

The Board ordered the matter be brought back to the next Board meeting.

#### **FINAL ACTION ON PETITIONS HEARD JULY 11, 2001**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Burger Basket, Inc.*, SR EA 13-864556; 56261, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Fereydoun Saidi & Hussein Saidi*, SR AB 23-797091; 41193, be redetermined as recommended by the Appeals Section.

Upon motion of Ms. Mandel, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Mary Ann Cambron*, SB UT 82-665422; 33447, be redetermined as recommended by the Appeals Section.

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Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, the Board ordered that the petition of *Faina Geller SR AC 99-161350; 89002127880*, be granted.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *RT Lawrence Corporation, SR AA 99-685836; 41896*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition of *ARB, Inc., SR EAA 22-074088; 78057*, be redetermined as recommended by the Appeals Section.

The Board ordered that the petition of *Bernard Gregory Ross & Ronald Eric McMillan, SR AS 11-813619; 89000035410*, be deferred to the next Sacramento meeting.

The Board adjourned at 11:20 a.m.

*The foregoing minutes are adopted by the Board on September 13, 2001.*

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